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OCT 1961

MEMORANDUM FOR: Director of Central Intelligence

SUBJECT : Class Determination and Findings for Negotiating Procurement of Supplies and Services for Clandestine Aerial Reconnaissance Operations by DPD

1. This memorandum contains a recommendation for Director of Central Intelligence approval. Such recommendation is contained in Paragraph 5.

2. Among the procurement authorities granted to this Agency in Section 3(a) of Public Law 81-110 is the authority to negotiate rather than advertise in those cases where the procurement involves supplies or services the nature of which should not be publicly disclosed. While most of the authorities for negotiation contained in PL 81-110 may be exercised at the discretion of the individual Contracting Officers, the foregoing relating to classified procurement may be utilized only with the non-delegable approval of the "Agency head."

3. Heretofore, Development Projects Division, through its Contracts Staff, has negotiated contracts within the IDEALIST, OXCART, [REDACTED] CORONA series, ARGON, and associated programs on the basic authority of individual Activity Program approvals or of line-item approvals of the DPD Budget. These basic program approvals have encompassed approval of specific contractors to perform specific and interrelated parts of the program. The extremely high sensitivity of the final operational phases of these programs, which sensitivity has in no way lessened since the original establishment of Project AQUATONE, has always spoken for itself in prohibiting public disclosure of procurement requirements for public bidding purposes.

4. No objection has ever been voiced as to the necessity for "negotiating" to prevent public disclosure. However, in the recent audit report of DPD, dated 7 July 1961, the Chief, Audit Staff, suggests that individual contract folders might well be individually documented to some expanded degree respecting authority

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to negotiate. In response to this audit report suggestion, the following reply was made by DD/P on 8 September 1961:

"ACTION TAKEN: Because of the nature of DPD projects, (each project usually encompasses the efforts of several associated contractors) we have been relying upon original and basic determination documents executed during the early stages of each program. We have felt that these original documents justify both the negotiation and selection of given contractors in subsequent procurement actions.

"We agree, however, that it is desirable to put increased emphasis on documenting individual contract folders with regard to the basis for negotiating authority and contractor selection and this practice is being initiated immediately."

5. In order, therefore, that the Chief, Contracts Staff, DPD, may be empowered to execute individual Determinations and Findings for contract actions negotiated pursuant to and within approved Activity Programs, it is recommended that you execute the attached Class Determinations and Findings, which will have the effect of permitting DPD Contracting Officers to take final action within their normal limits of contracting authority in negotiating contracts for supplies and services within DPD approved programs, the nature of which should not be publicly disclosed.

Richard M. Kissell, Jr.

RICHARD M. KISSELL, JR.
Deputy Director
(Plans)

Attachment:

Class Determination and Findings
Negotiation of DPD Contracts Whose
Nature Should Not Be Publicly Disclosed

25X9A5
CONCUR:



4 OCT 1961

Date

General Counsel

*The recommended action is a purely technical matter to protect Contracting Officers and can be executed by the DD/S or the DCI. There is no legal requirement that it be signed by the DCI.

Class Determination and Findings
Negotiation of DPD Contracts Whose Nature Should Not Be Publicly Disclosed

FINDINGS

1. The Central Intelligence Agency is assigned responsibilities and duties in accordance with Section 102(d) of the National Security Act of 1947 (Public Law 80-253) relative to the foreign intelligence activities of the United States Government.
2. The Director of Central Intelligence is charged with responsibility for protecting intelligence sources and methods from unauthorized disclosure (Section 102(d)(3), PL 80-253).
3. In support of the mission assigned to the Central Intelligence Agency, it is necessary on occasion to procure supplies and services which are either themselves classified, or if not classified themselves must be obtained under classified procurement methods to insure their sterility and to prevent traceability to or association with either with Agency, the United States Government, or some other particular entity, government, or geographical area as the circumstances of the case require.
4. Basic statutes regulating Federal procurement and CIA regulations recognize that procurement by negotiation rather than by advertising may be undertaken only where specifically authorized. Procurement by negotiation justified on the ground that "the supplies or services are of such a nature that they should not be publicly disclosed" is authorized by the CIA Act of 1949 (PL 81-110) only upon approval of the "Agency head," which includes the Director, Deputy Director and Deputy Director (Support). This authority is not further delegable, but Public Law 81-110 does authorize the Agency head to make determinations and decisions on procurement matters with respect to "classes of purchases or contracts" as well as to individual procurement actions (PL 81-110, Section 3(c)).
5. When the proposed CIA Act was under initial consideration by the Congress, specific attention was given to the security (no public disclosure) justification for negotiated procurement. On 8 April 1948,

the Director of Central Intelligence presented to the House Armed Services Committee a detailed analysis of the entire proposed CIA legislation. On the immediate point under discussion, he stated:

"This is one of the most important provisions for CIA in view of the peculiar nature of some of our operational equipment and the confidential purposes to which it is put. Under this provision the Director would have authority to approve the procurement of special materials and equipment through trusted sources. In such cases any public or unnecessary disclosure to unauthorized sources would be detrimental to the national interest."

6. The "no public disclosure" justification for Development Projects Division's procurement of supplies and services has been and is generally relied upon as the authority to negotiate requisite procurement within the extremely sensitive IDEALIST, OXCART, [REDACTED] CORONA series, ARGON, and closely associated reconnaissance support programs. Programs of this level of sensitivity, as conducted by DPD, require not only non-public disclosure in procurement matters, but also tight security compartmentation within the Agency and DOD components. For these security reasons, procurement of supplies and services in support of these programs has similarly been compartmented. 25X1A2g

7. Because of the time exigency involved and the practical inconvenience of referring each individual contract action through channels to the DCI and DDCI for individual execution of an appropriate Determination and Findings, and on the basis of the foregoing findings, I hereby make the following determination:

a. Procurement actions wherein a security classification is imposed by their being a part of or closely associated with the following sensitive Development Projects Division programs shall be considered as a single "class of purchases or contracts" within the contemplation of Section 3(c) of Public Law 81-110: IDEALIST, OXCART, [REDACTED] CORONA series, ARGON, and directly associated support programs.

b. Individual procurement actions within this class may be negotiated rather than advertised, citing as justification in the Determination and Findings for each case the authority of Section 3(a) of PL 81-110 and this Class Determination and Findings.

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c. In view of the herein contained blanket approval for negotiating the above cases, DPD contracting officers handling such cases may take final actions thereon within the normal limits of their delegated authority and within approved Activity Programs. 25X9A5



Date: OCT 26 1961

Allen W. Dulles
Al Dulles
Director